

ESTTA Tracking number: **ESTTA381934**Filing date: **12/03/2010**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**Petition for Cancellation**

Notice is hereby given that the following party requests to cancel indicated registration.

Petitioner Information

Name	Embarkons, Inc.		
Entity	Corporation	Citizenship	Delaware
Address	514 Bryant Street Suite 119 Palo Alto, CA 94301 UNITED STATES		

Attorney information	Todd S. Bontemps Cooley LLP 5 Palo Alto Square 3000 El Camino Real Palo Alto, CA 94306 UNITED STATES trademarks@cooley.com Phone:650-843-5000
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Registration Subject to Cancellation

Registration No	3742542	Registration date	01/26/2010
Registrant	Embarc, Inc. 1029 Chestnut Street Newton Upper Falls, MA 02464 UNITED STATES		

Goods/Services Subject to Cancellation

Class 042. First Use: 2002/07/10 First Use In Commerce: 2002/07/10 All goods and services in the class are cancelled, namely: Custom web application design and development services for others; website design and development services for others; providing consultation on the use, integration and operation of computer software programs and the updating of computer software programs services for others; optimization design and maintenance of websites and Internet search engines for others; corporate identity design services for others, namely, designing websites for advertising purposes

Grounds for Cancellation

Abandonment	Trademark Act section 14
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Related Proceedings	none
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Attachments	Embarc.pdf (5 pages)(142822 bytes)
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Certificate of Service

The undersigned hereby certifies that a copy of this paper has been served upon all parties, at their address

record by First Class Mail on this date.

Signature	/TSB5/
Name	Todd S. Bontemps
Date	12/03/2010

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

In re Registration of

Embarc, Inc.

Reg. No. 3,742,542

Registered: January 26, 2010

Mark: EMBARC

Cancellation No. _____

PETITION FOR CANCELLATION

Embarkons, Inc., a Delaware corporation, having its principal place of business at 514 Bryant Street, Suite 119, Palo Alto, California 94301 (hereinafter “Petitioner”), believes that it will be damaged by the continued registration of U.S. Registration No. 3,742,542 for the mark EMBARC, issued to Embarc, Inc., a Massachusetts corporation, formerly doing business at 1029 Chestnut Street, Newton Upper Falls, Massachusetts 02464 (hereinafter “Registrant”) and hereby petitions to cancel the same under Section 14 of the Trademark Act of 1947, 15 U.S.C. § 1064.

As grounds for its petition, Petitioner alleges that:

1. Petitioner is a Delaware corporation, having its principal place of business at 514 Bryant Street, Suite 119, Palo Alto, California 94301.
2. On information and belief, Registrant was a Massachusetts corporation, formerly doing business at 1029 Chestnut Street, Newton Upper Falls, Massachusetts 02464.
3. Petitioner is the owner of two applications to register the mark EMBARKONS with the United States Patent and Trademark Office (“PTO”), Serial Nos. 77/943,966 and 77/943,970 respectively. Said applications cover “providing a web site for connecting web application developers with buyers and distributors” in International Class 35, and “computer

services, namely, creating an on-line community for registered users to participate in discussions and to get feedback from their peers regarding computer hardware and software development, computer and technology commercial ventures, and financial backing for computer hardware and software developers and computer and technology businesses; application service provider (ASP) featuring software for use in developing, marketing, and distributing web applications, electronic books, and computer games” in International Class 42 (collectively, the “EMBARKONS Applications”).

4. The USPTO has issued Office Actions against the EMBARKONS Applications based on an alleged likelihood of confusion under Section 2(d) of the Trademark Act of 1946, 15 U.S.C. §1052(d), with Registrant’s U.S. Registration No. 3,742,542 (the “Cited Registration”).

5. The Cited Registration issued January 26, 2010 to Registrant for the mark EMBARC for “custom web application design and development services for others; website design and development services for others; providing consultation on the use, integration and operation of computer software programs and the updating of computer software programs services for others; optimization design and maintenance of websites and Internet search engines for others; corporate identity design services for others, namely, designing websites for advertising purposes” in International Class 42.

6. As set forth in detail below, on information and belief, the Cited Registration is no longer used in commerce and has been abandoned based on non-use with an intent not to resume. The continued registration of the Cited Registration is causing actual harm to Petitioner as it is blocking registration of Petitioner’s EMBARKONS Applications.

CLAIM FOR RELIEF

Registration No. 3,742,542 Has Been Abandoned

7. Petitioner repeats and realleges each and every allegation set forth in Paragraphs 1 through 7 as if fully set forth herein.

8. The Cited Registration may be cancelled under Section 14 of the Trademark Act of 1964, 15 U.S.C. § 1064(3).

9. The Cited Registration has been abandoned as set forth in Section 45 of the Trademark Act of 1946, 15 U.S.C. § 1127.

10. Section 45 of the Trademark Act of 1946, 15 U.S.C. § 1127 provides that a mark shall be deemed to be “abandoned” (1) When its use has been discontinued with intent not to resume such use. Intent not to resume may be inferred from circumstances...“Use” of a mark means to bona fide use of such mark made in the ordinary course of trade, and not made merely to serve a right in a mark.”

11. On information and belief, Registrant is no longer an active corporation, as it was acquired on or around December 2007 by The Garfield Group.

12. On information and belief, as a result of the December 2007 corporate acquisition, Registrant was renamed “Garfield Group Interactive,” a division of The Garfield Group, and the EMBARC Mark subject of the Cited Registration has not been used in interstate commerce since December 2007.

13. Because Registrant no longer exists and its successor-in-interest has not used the Cited Registration for the past three years, Registrant's intent not to resume use of its former mark may be reasonably inferred.

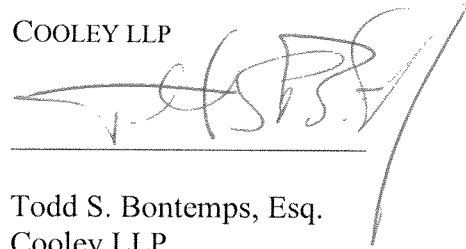
14. No assignment of the Cited Registration has been recorded with the USPTO.

15. Petitioner is, and will continue to be, harmed by the continued registration of the mark shown in the Cited Registration because the PTO has refused registration of Petitioner's EMBARKONS Applications based on the existence of the Cited Registration.

16. Accordingly, Petitioner requests that this Petition to Cancel be sustained, and that the Cited Registration for the mark EMBARC be cancelled.

Respectfully submitted,

COOLEY LLP

A handwritten signature in dark ink, appearing to read 'T. S. Bontemps', is written over a horizontal line. A long, sweeping diagonal stroke extends from the bottom right of the signature area.

By:

Todd S. Bontemps, Esq.

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Counsel for Petitioner Embarkons, Inc.

Date: December 3, 2010

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the PETITION FOR CANCELLATION has been served on the listed Registrant and the attorney of record for the listed Registrant via First Class Mail this 3rd day of December 2010 at the following addresses:

Embarc, Inc.
1020 Chestnut Street
Newton Upper Falls, MA 02464

and

Harry L. Grossman
Van Wert, Zimmer & Conlin, P.C.
245 Winter Street, Suite 400
Waltham, MA 02451-8709

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.



Elizabeth Ortiz